



STATE BOARD OF EQUALIZATION

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April 18, 1988

Dear Mr. : :

This is in response to your letter of March 3, 1988 to Mr. Richard H. Ochsner in which you request our opinion regarding the applicability of Proposition 58 and Revenue and Taxation Code* section 63.1 to the following facts contained in your letter.

The owner of a home transfers it to the trustee of a trust in which the transferor-parent has no legal or equitable interest. The trust provides that one or more of the children of the transferor have a defeasible life estate in the home and one or more of them have a defeasible remainder interest in the home. The life estate is for the life of the trustor.

The conditions of defeasance are first that one or more of the children of the trustor of the trust, and possibly one or more persons who are not family members of the trustor also have a power to appoint any part of the trust up to the whole thereof at any time and from time to time back to the trustor. The foregoing powers of appointment held by the children, and possibly by other persons as well, could also be exercised in favor of any trust for the benefit of the trustor. The powers could be exercised by an inter vivos or testamentary instrument.

We are to assume further that the trustor has a sprinkle power of appointment over both the life estate and remainder interests of the child or children. In other words, the trustor could appoint the remaining balance of the life estate and remainder interests to anyone at all. The trustor's power could be exercised by an inter vivos or testamentary instrument.

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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We are also to assume that in default of any exercise of trustor's "sprinkle" power of appointment, and in default of any exercise of the power of appointment that might be held by trustor's children and by other person or persons who are not children of trustor, the life estate(s) would remain in the child(ren) and the remainder interests in the trust (i.e., the home) would vest indefeasibly at the trustor's death in such child or children as were designated in the trust instrument as remaindermen.

You ask whether the transfer of the home by the trustor to such a trust would be a "change in ownership" for Proposition 13 purposes requiring a reassessment.

As you know, Proposition 58 amended article XIII A of the California Constitution to provide among other things that the terms "purchased" and "change in ownership" do not include the purchase or transfer of the principal residence and the first \$1 million of the full cash value of other real property between parents and children. Chapter 48 of the Statutes of 1987 (AB 47) is the implementing legislation for Proposition 58. Chapter 48 added section 63.1 to the Revenue and Taxation Code and applies to purchases and transfers of real property completed on or after November 6, 1986.

Prop 58 amended to deal with trusts

It is our position that Proposition 58 and section 63.1 are applicable to transfers through the medium of a trust provided the requirements of those provisions are otherwise satisfied. See enclosed Board Letter to Assessors dated September 11, 1987, No. 87/22, question No. 9. Although Proposition 58 and section 63.1 do not specifically deal with transfers in trust, the change in ownership rules relating to trusts in effect provide that subject to exceptions not here relevant, the present beneficiary of the trust is the beneficial owner of the trust property. Section 62(d), Property Tax Rule 462(c)(2)(A). Further, we have taken the position that the life income beneficiary of a trust is the present beneficiary of the trust for purposes of section 62(d)(1) despite the fact that the interest could be defeated by the invasion of the trust corpus up to the whole thereof in favor of other persons by the trustee in his absolute discretion.

On the other hand, we have taken the position that where the trustee has the discretion to distribute income among the deceased trustor's surviving spouse and others, i.e., a sprinkling trust, the surviving spouse is not the sole present beneficiary of the trust and the interspousal exclusion does not apply.

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As we read your letter, the interests of the trust beneficiaries are similar to that of the income beneficiary in the first example discussed above, i.e., a vested present interest but subject to defeasance. If that is the character of the interests created, we would conclude that the transfer is between parent and child or children for purposes of Proposition 58 and section 63.1. The fact that the life estate is for the life of the parent rather than for the life of the child or children is not significant in our opinion.

Your next question is whether Proposition 58 covers transfers to grandchildren.

Proposition 58 and section 63.1 expressly exclude purchases and transfers between parents and children from change in ownership. Neither provision mentions grandchildren. Section 63.1(c)(2)(A)-(D) broadly defines "children" but grandchildren are not included. A purchase or transfer of real property between a grandparent and grandchild would therefore not be excluded from change in ownership in our opinion.

Your last question is whether a transfer to a child must be gratuitous to be excluded from change in ownership under Proposition 58.

As indicated above, Proposition 58 and section 63.1 exclude the "purchase or transfer" of real property between parents and children from change in ownership subject to specified limitations. Since a "purchase" is defined as "a change in ownership for consideration" by section 67, it is clear that a transfer between parent and child need not be gratuitous to be excluded from change in ownership under Proposition 58 and section 63.1

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If we can be of further assistance, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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Enclosure